

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

James L. Bond,
Petitioner

v.

Case No. 1:02-cv-451

Ernie Moore,
Respondent

ORDER AFFIRMING REPORT AND RECOMMENDATION

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed July 9, 2004 (Doc. 7).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections have been filed to the Magistrate Judge's Report and Recommendation.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, **IT IS ORDERED** that the Magistrate Judge's Report is **ADOPTED** as follows:

1) Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** with prejudice.

2) A certificate of appealability will not issue with respect to petitioner's ground for relief alleged in the petition, which this Court has concluded is time-barred as well as waived and thus barred from review on two alternative procedural grounds, because "jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling" at least with respect to the waiver issue under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).¹

3) With respect to any application by petitioner for *in forma pauperis* status for the purposes of pursuing an appeal of this Order, this Court certifies that pursuant to 28 U.S.C. § 1915(a) an appeal of this Order would not be taken in good faith, and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Date July 30, 2004

s/Sandra S. Beckwith

Sandra S. Beckwith

United States District Judge

¹Because this Court finds petitioner has not met the first prong of the *Slack* standard, it need not address the second prong of *Slack* as to whether "jurists of reason" would find it debatable whether petitioner has stated a viable constitutional claim for relief in his habeas petition. See *Slack*, 529 U.S. at 484.